IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.1499 of 2007

Mr.Ajaj Ismail Memon & ors. Petitioners
Vs.
Mr.Purushottam L. Patel & anr. Respondents

Mr.S.N.Chandrachud for petitioners.
Mr.Deepak Natu and Mr.M.D.Parab for respondents.

CORAM: B.H.MARLAPALLE, J.

June 8, 2007.

P.C.

. Heard Mr.Chandrachud, the learned counsel for the petitioner - original defendant no.1 in Civil Suit No.541 of 2005. The defendant no.2 is the partnership firm by name "M/s. Poona Steel Yard". After filing the written statement and on when recording of evidence had commenced, the defendant no.1 submitted an application at Exhibit 39 for amendment of the written statement and the said application has been rejected by the learned Judge of the trial Court by his order dated 31/1/2007. Hence this writ petition under Article 227 of the Constitution.

. As per the trial Court the amendment sought to be made was for clarifying the nature of the

defendant no.2 i.e. whether it is a partnership firm or it is a family proprietary concern and the other amendment sought to be made was regarding the payment of rental compensation for the past as well as for the future. Most of the averments were already set out in para 4 of the written statement. For these two reasons the application at Exhibit 39 has been rejected.

. Mr.Chandrachud, the learned counsel for the petitioners in support of his challenge to the impugned order has placed reliance on the following two decisions of this Court:

(i) Mudra Salt and Chemical Industries Vs. Collector, Thane and ors. **[2001 (3) Mh.L.J. 151]**, and

(ii) Bharat Petroleum Corpn. Ltd. vs. Precious Finance Investment Pvt. Ltd. **[2007 (1) Mh.L.J. 331]**.

. Perusal of the amendment application clearly shows that at the first place the defendant no.1 sought to state that the defendant no.2 was a

partnership firm and in the second part regarding the payment of rental compensation, he stated that he was always ready and willing to pay the increased rental compensation. The trial Court is right in observing that whether the defendant no.2 is a partnership firm or a family proprietary concern is a matter which could be proved by leading documentary evidence and the evidence of the defendants is yet to start. On the second part the trial Court is right in its observations that most of the averments were already set out in para 4 of the written statement. There was no new pleading that was sought to be set out in the amendment application and the learned counsel states that the amendment was for better clarifications and elaboration of the original pleadings made in the written statement. I am satisfied that no prejudice has been caused to the defendants by rejecting the application at Exhibit 39 by the impugned order and the said order cannot be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution. Both the judgements relied on by the learned counsel for the petitioners are not applicable to the facts of this case. Hence the petition is rejected summarily.

. As has been already been observed, the rejection of this writ petition will not come in the way of the petitioners in leading evidence regarding the nature of the defendant no.2 - firm.

(B.H.MARL